

# SENATE BILL REPORT

## ESSB 5439

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As Passed Senate, February 26, 2021

**Title:** An act relating to facilitating the coordinated installation of broadband along state highways.

**Brief Description:** Facilitating the coordinated installation of broadband along state highways.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Saldaña, Kuderer, Lovelett and Nguyen).

**Brief History:**

**Committee Activity:** Transportation: 2/15/21, 2/22/21 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 2/26/21, 45-0.

**Brief Summary of Engrossed First Substitute Bill**

- Directs the Statewide Broadband Office to consider transportation when coordinating and reporting on broadband infrastructure development.
- Requires the Department of Transportation (WSDOT) to develop a policy to notify broadband providers before construction projects so installation opportunities can be coordinated, and if no opportunities can be identified, allows WSDOT to proactively install conduit and issue franchises for its use.
- Adds a Joint Transportation Committee study to provide recommendations related to WSDOT's role in broadband service expansion efforts, subject to appropriations.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5439 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; Cleveland, Das, Fortunato,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Lovelett, Nguyen, Nobles, Randall, Sheldon, Wilson, C. and Wilson, J.

**Minority Report:** That it be referred without recommendation.

Signed by Senators King, Ranking Member; Hawkins and Padden.

**Staff:** Erica Bramlet (786-7321)

**Background:** Broadband. Broadband is any service providing advanced telecommunications capability and Internet access with certain transmission speeds. There are several transmission technologies, some of which require installing fiber optic technology in conduits, which are often located in public rights-of-way similar to other utility infrastructure.

In 2019, the Statewide Broadband Office (SBO) was established within the Department of Commerce (Commerce) with a goal of improving affordable, quality broadband within the state. SBO powers and duties include:

- serving as the central broadband planning body for the state;
- coordinating with relevant parties to develop strategies and plans for deployment of broadband infrastructure;
- reviewing existing broadband initiatives;
- developing and implementing a statewide plan to encourage cost-effective broadband access and increased usage; and
- encouraging public-private partnerships to increase deployment and adoption of broadband services and applications.

Highways and Utilities. The Department of Transportation (WSDOT) issues utility permits and franchises on highway rights-of-way for water, gas, electricity, telephone, and telecommunications at no cost except for recovery of staff labor costs. Personal wireless service facilities are exempt from the permit and franchise process, but are required to pay fair market value for the lease costs.

If a service provider is granted a permit, franchise, or lease by WSDOT and installs infrastructure in the rights-of-way, whether it be underground, at-grade, above grade, or some combination thereof, it is required to follow WSDOT standards for any trenching, pavement restoration, or traffic control. Service providers are also required to construct and maintain their facilities at their own expense, including relocation if a future WSDOT project requires it.

In 2018, the U.S. Secretary of Transportation was directed to issue a regulation—for which rulemaking is still in progress—requiring each state receiving federal-aid highway funds to meet the following requirements:

- identify a broadband utility coordinator to facilitate broadband infrastructure rights-of-way efforts within the state;
- register broadband infrastructure entities that seek to be included in those facilitation

- efforts;
- establish an electronic process to annually notify broadband infrastructure entities of the state transportation improvement program; and
- coordinate statewide and local telecommunications and land use plans, including strategies to minimize repeated excavations involving the installation of broadband infrastructure in a right-of-way.

**Summary of Engrossed First Substitute Bill:** The SBO is encouraged to collaborate with WSDOT and report biennially on this coordination as part of an existing reporting requirement. Addressing the growing needs of the transportation system is added as an expected outcome of the SBO's purpose in increasing access to broadband.

WSDOT must develop a policy compliant with state and federal laws to provide information to broadband providers about planned state highway projects prior to construction so that potential installation of broadband facilities can be coordinated. If no providers are ready or able to coordinate, WSDOT may enlist its contractors to install conduit as part of a transportation project to minimize future traffic impacts, support vehicle miles traveled and congestion reduction goals by supporting more telework, and preparing the transportation system for widespread use of autonomous vehicles. Before use of this conduit, broadband providers must first obtain a franchise from WSDOT. Installation and maintenance costs are the responsibility of the broadband provider.

Broadband infrastructure is identified as a critical part of the state's infrastructure, and is thus added as one of the reasons for allowing access to limited-access highway rights-of-way. Clarification is added that fiber optic is eligible for WSDOT franchises to use state highway rights-of-way.

Subject to appropriation, the Joint Transportation Committee is directed to oversee a consultant study to provide recommendations related to WSDOT's role in broadband service expansion efforts.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Highways are not only there to move goods and people, but also to move ideas and to make sure everyone has access to economic success regardless of geographic location. This bill has become especially important with everyone working from home and supporting students doing remote

learning. Installing broadband infrastructure while WSDOT is doing other projects would be more efficient and would also help rural areas by giving farmers access to new markets and impacting crucial roads less by only digging once. Internet service providers invest \$2.5 billion every year in Washington, and this bill would help them stretch their dollars in order to ensure every citizen has access to fast, reliable Internet. This bill will support the future of autonomous and connected vehicles, improving safety and enhancing livability for all Washington residents.

OTHER: This bill would strengthen the state's role in broadband deployment and establish a clear legislative view that broadband serves a highway purpose in managing transportation demand and enabling cooperative automated transportation systems. Recommendations related to unanticipated complications with sections 6 to 9 have been shared with the sponsor, but overall two important goals would be accomplished with this bill: increasing flexibility for installing broadband in highway rights-of-way and establishing a WSDOT dig once policy.

**Persons Testifying:** PRO: Senator Rebecca Saldaña, Prime Sponsor; Reema Griffith, Washington State Transportation Commission; Mike Ennis, Association of Washington Business; Bre Elsey, Washington Farm Bureau; Joe Poire, Port of Whitman County.

OTHER: Ahmer Nizam, Washington State Department of Transportation.

**Persons Signed In To Testify But Not Testifying:** No one.